

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2002-67-C - ORDER NO. 2002-660

SEPTEMBER 18, 2002

IN RE: Application of Kiger Telephone and Telephony, LLC for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Interexchange Telecommunications Services within the State of South Carolina; and for Alternative Regulation.) ORDER) GRANTING) CERTIFICATE FOR) LONG DISTANCE) AUTHORITY AND FOR) ALTERNATIVE) REGULATION
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This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Kiger Telephone and Telephony, LLC ("Kiger" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its business interexchange services under the identical regulatory treatment granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2001) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Kiger to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Kiger's Application and of the manner and time in which to file the appropriate pleadings for participation in

the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on August 7, 2002 at 11:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Randolph Mitchell, Vice Chairman, presided. Kiger was represented by Scott A. Elliott, Esquire. Adelaide D. Kline, Staff Counsel, represented the Commission Staff.

Robert S. Kiger, Chairman and Chief Executive Officer of Kiger, appeared and testified in support of the Application. Mr. Kiger testified that he became involved in the telecommunications industry about 1996 when he was a consultant for a telecommunications company in Denver, Colorado. He said he joined that company's staff as General Manager and Senior Vice President after it was sold in 1999 and stayed on with Internet Commerce & Communications as vice president of the three telecommunications services. Mr. Kiger further testified that last year he purchased the three telecommunications entities from Internet Commerce & Communications and started Kiger Telephone and Telephony, LLC at that time. He offered that the three telecommunications divisions were profitable when he purchased them, that Kiger has remained profitable since then, and that he believes Kiger's business plan will remain profitable into the future.

The record reveals that Kiger is a limited liability company that was organized under the laws of the State of Colorado and has received authorization to transact business within the State of South Carolina. Upon receiving certification from the

Commission, Kiger intends to operate as a reseller of IntraLATA and interLATA intrastate telecommunications services to the public on a statewide basis. Kiger seeks authority to offer on a resale basis within the State of South Carolina intrastate, interLATA and, to the extent authorized by the Commission, intraLATA direct-dialed services including (1+) service, flat rate service, 800 inbound service, and travel cards. Kiger seeks statewide authority to provide IntraLATA services authorized by the Commission in Docket No. 92-182-C, 92-183-C and 92-200-C. The record further reveals that Kiger has no plans at this time to construct any telecommunications transmission facilities of its own and seeks no construction authority. Kiger will operate as a switchless reseller and will arrange for the traffic of underlying subscribers to be routed directly over the networks of Kiger's network providers.

Mr. Kiger stated that Global Crossing and MCI WorldCom will serve as the Company's underlying carriers. He said that Kiger will choose its underlying carriers based upon the quality of service of the carriers properly certified by the Commission to provide such service. The record also reveals that Kiger intends to provide non-facilities-based interexchange services to both residential and business class customers throughout the entire State of South Carolina.

Mr. Kiger stated that Kiger is currently certified in forty-six states of the United States and is providing long distance services in approximately thirty-three states with certification pending in Nevada and Delaware. The record reveals that Kiger has its principal office and headquarters in Denver, Colorado. He testified that Kiger will market its services in South Carolina through independent agents, in-house agents, and affinity

groups. He explained that in the State of Virginia, Kiger markets its services to some of the customers of the rural electric cooperatives. He said that his Company does not plan to do any telemarketing at this time but is prepared to follow the Commission's rules and regulations if its business model should change in the future. He also offered that Kiger does not intend to offer prepaid long distance cards at this time.

Regarding the Company's technical ability to offer telecommunications services in South Carolina, the record states that the Company has sufficient technical, financial and managerial resources and abilities to provide non-facilities-based resold telecommunications services within the State of South Carolina. Mr. Kiger testified that Kiger's management personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. He said he had gained business experience with Occidental Petroleum after he graduated from Kansas State University with a bachelor's degree. Additionally, Mr. Kiger stated he holds an MBA in finance from the University of Denver. He testified that he had previously worked with Financial Service Corporation in Atlanta, Georgia, and that he started his own business in 1983 as an insurance brokerage firm. Upon the sale of that company, he said he had been doing some consulting work with a telecommunications company in Denver and that he joined Internet Commerce & Communications in 1996 as Vice President and General Manager of Telecommunications Services. The record reveals that Mr. Kiger held that position from June of 1996 until September of 2001.

Mr. Kiger testified that Dominic Perez, Vice President of Operations and the person in charge of customer service for Kiger, has had previous telecommunications experience. He said Mr. Perez had been a customer service director for Qwest Communications, had been an account manager for Global Crossing, and had worked on technical issues for resellers. Mr. Kiger stated that Mr. Perez also had been associated with Internet Commerce & Communications as Director of Customer Service. Mr. Perez joined Kiger Telephone & Telephony when Mr. Kiger purchased the telecommunications unit of Internet Commerce & Communications. Mr. Kiger said that Kimberly Griffin is General Manager and Controller of Kiger. He said she also had been an employee of Internet Commerce & Communications where she was involved with cash receipts and receivables.

As to the Company's customer service operations, Mr. Kiger testified that the toll-free number 800-375-9997 will be available twenty-four hours a day, seven days a week. He offered that in-house staff will handle the customer service calls from 8:00 a.m. until 5:00 p.m. Monday through Friday, Mountain Standard Time. He said an emergency out of service number is available at all other times. Additionally, Mr. Kiger said Mr. Perez would be the Company's customer service contact person. He testified that he, Mr. Kiger, would serve as the regulatory and financial contact person. He offered his direct office telephone number (303) 313-0801 and the Company's toll-free number 800-847-4520, extension 201. The record reveals that the Company's billing will be done in-house.

In support of Kiger's financial ability to provide the services it seeks to provide in South Carolina, Mr. Kiger testified that his Company has remained profitable and he

expects that success to continue. He said he is presently working on a line of credit that had not yet been approved at the time of the hearing. Mr. Kiger affirmed the Company's obligation to file all reports required by the Commission by certain deadlines and to keep South Carolina specific records.

According to the Application and Kiger's testimony, the Company requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so that Kiger can maintain its records outside of South Carolina. The Company wishes to maintain its books and records at its headquarters in Denver, Colorado. Mr. Kiger stated that the Company is aware and agrees to abide by the Commission's regulation that requires that these records be made available for examination by the Commission at reasonable hours. Kiger also requested that it be allowed to keep its books and financial records according to the Generally Accepted Accounting Principles (GAAP) rather than according to the Uniform System of Accounts (USOA).

According to Mr. Kiger, the Company has never had authority denied in any state where it has applied for authority nor has the Company had authority revoked in any state where it has been granted authority. Additionally, he said that Kiger has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. According to the testimony, Kiger has not marketed its services in South Carolina prior to receiving certification. Mr. Kiger also testified that the Company has not received revenues from the completion of intrastate calls in South Carolina prior to receiving this certification. He said that Kiger has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. Finally, he testified that Kiger will abide

by all the Commission's rules, regulations and Orders upon the Company receiving certification to operate as a reseller of intrastate interexchange telecommunications services in South Carolina.

After full consideration of the applicable law, the Company's application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Kiger is organized as a limited liability company under the laws of the State of Colorado and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. Kiger operates as a non-facilities-based reseller of interexchange services and wishes to provide its services in South Carolina.

3. Kiger has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Kiger to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the long distance services of Kiger which are consistent with the principles and procedures established for alternative regulation for business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of Kiger including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Kiger also.

3. The Commission adopts a rate design for Kiger for its resale of residential interexchange services which includes only maximum rate levels for each tariff charge.

A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. Kiger shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. Kiger shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2001).

5. If it has not already done so by the date of issuance of this Order, Kiger shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, Kiger

shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622.1 (1976) with its final Tariff.

6. Kiger is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Kiger shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Kiger changes underlying carriers, it shall notify the Commission in writing.

9. Kiger shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Kiger shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

10. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Kiger shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. With regard to the origination and termination of toll calls within the same LATA, Kiger shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal

Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by order No. 93-462.

13. By its Application and testimony at the hearing, Kiger requested a waiver from the Commission's requirement to maintain its books within the State of South Carolina according to 26 S.C. Code Ann. Regs. 103-610 (1976). The Commission grants the Company's request to waive the record keeping regulation so that its books and records may be kept at its principal office and headquarters in Colorado. The Commission also grants Kiger the opportunity to keep its books and records in accordance with GAAP rather than the USOA.

14. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

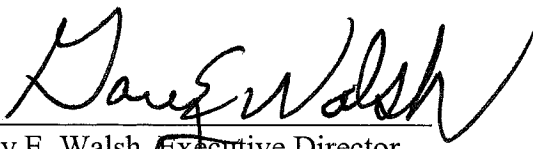
15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director
(SEAL)